

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SOUTH TEXAS FRAC, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	SA-20-CA-678-OLG (HJB)
	§	
PHOENIX PROCESS EQUIPMENT, LLC,	§	
	§	
Defendant.	§	

ORDER

Before the Court are the following motions: (1) South Texas Frac LLC's and WI Texas Frac LLC's (hereinafter "Plaintiffs") Motion to Exclude and/or Limit the Expert Testimony of David Hutchinson (Docket Entry 106); (2) Plaintiffs' Motion to Exclude and/or Limit the Expert Testimony of Kenneth R. Schweigert (Docket Entry 113); (3) Plaintiffs' Motion to Exclude and/or Limit the Expert Testimony of Phoenix Process Equipment Co.'s Non-Retained Experts (Docket Entry 115); (4) Plaintiffs' Motion to Exclude and/or Limit the Expert Testimony of Tommy Mathews and Michelle M. Lee (Docket Entry 119); (5) Defendant's Motion to Strike and/or Limit the Testimony of Ruben Garza (Docket Entry 122); (6) Defendant's Motion to Strike and/or Limit the Testimony of Rob Hargrave (Docket Entry 123); (7) Defendant's Motion to Strike and/or Limit the Testimony of Pat McConnell (Docket Entry 124); and (8) Defendant's Motion to Strike and/or Limit the Testimony of Michael Wick (Docket Entry 126). Pretrial matters in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1). (See Docket Entry 41.)

A hearing was held on the parties' motions on October 4, 2021. In accordance with the Court's ruling at the hearing, it is hereby **ORDERED** as follows:

- 1) Plaintiffs' Motion to Exclude and/or Limit the Expert Testimony of David Hutchinson (Docket Entry 106) is **GRANTED IN PART, DENIED IN PART, and DENIED WITHOUT PEJUDICE IN PART**. The Motion is **GRANTED** to the extent that Hutchinson's testimony is limited to his opinions set out at pages 15 and 16 of his report. (See Docket Entry 106-2, at 15–16.) The Motion is **DENIED** with regard to Plaintiffs' objections to Hutchinson's qualification to testify as an expert in accordance with Federal Rule of Evidence 702. The Motion is **DENIED WITHOUT PREJUDICE** as to Plaintiffs' claims regarding the relevance of Hutchinson's testimony; this issue may be reconsidered via *motion in limine* or objection at trial.
- 2) Plaintiffs' Motion to Exclude and/or Limit the Expert Testimony of Kenneth R. Schweigert (Docket Entry 113) is **GRANTED IN PART, DENIED IN PART, and DENIED WITHOUT PEJUDICE IN PART**. The Motion is **GRANTED IN PART and DENIED WITHOUT PREJUDICE IN PART** as to Schweigert's testimony regarding frac sand mine operations relating to Plaintiffs' breach of contract claim; this testimony is limited to damages only. As to Schweigert's testimony as to "geological" issues and Plaintiffs' "misunderstanding" of data (See Docket Entry 113, at 2, 13–14), the testimony is limited to rebuttal only. The Motion is **DENIED** as to Plaintiffs' general objections to Schweigert's qualifications, and it is **DENIED WITHOUT**

PREJUDICE as to Schweigert's testimony relevant to Plaintiffs' negligence claim, and as to any other arguments regarding the legal relevance of the witness's testimony.

- 3) Plaintiffs' Motion to Exclude and/or Limit the Expert Testimony of Tommy Mathews and Michelle M. Lee (Docket Entry 119) is **DENIED WITHOUT PREJUDICE**. **On or before November 4, 2021**, Defendant must supplement the report of these experts. Plaintiffs may then renew their motion **on or before November 18, 2021**, and Defendant may respond **on or before December 2, 2021**.
- 4) Plaintiffs' Motion to Exclude and/or Limit the Expert Testimony of Phoenix Process Equipment Co.'s Non-Retained Experts (Docket Entry 115), Defendant's Motion to Strike and/or Limit the Testimony of Ruben Garza (Docket Entry 122), Defendant's Motion to Strike and/or Limit the Testimony of Rob Hargrave (Docket Entry 123), and Defendant's Motion to Strike and/or Limit the Testimony of Pat McConnell (Docket Entry 124) are **DENIED IN PART** and **DENIED WITHOUT PREJUDICE IN PART**. The Motions are **DENIED** with respect to the qualifications of these witnesses to testify as experts in accordance with Federal Rule of Evidence 702. Other arguments in the Motions are **DENIED WITHOUT PREJUDICE** to reconsideration via *motion in limine* or objection at trial.
- 5) Defendant's Motion to Strike and/or Limit the Testimony of Michael Wick (Docket Entry 126) is **GRANTED IN PART** and **DENIED IN PART**. The Motion is

GRANTED with respect to any legal opinion regarding warranties or intentional misrepresentations made by Plaintiffs. Otherwise it is **DENIED**.

SIGNED on October 4, 2021.



Henry J. Bemporad
United States Magistrate Judge